THE HYDERABAD JAGIRDARS DEBT SETTLEMENT ACT, 1952.

No. XII OF 1952.

CONTENTS.

CHAPTER I.

Preliminary.

Preamble.

SECTIONS.

1. Short title, extent and commencement.
2. Definitions.
3. Savings.

CHAPTER II.

Constitution and Power of a Board.

4. Constitution of the Board.
5. Removal of Board or member.
6. Power of Board to decide all questions arising on settlement of debts.
7. Procedure before Board.
8. Proceedings deemed to be judicial proceedings.
9. Control over Board.
10. Power of Board to extend time.

CHAPTER III.

Procedure for settlement of Debts.

11. Application for settlement of debts.
12. Every creditor and debtor to file a true and correct statement before Board.
13. Application by debtor jointly and severally liable.
14. Assignees from non-debtor not entitled to benefit of this Act.
15. Application for recording settlement.
16. Settlement during pendency of proceedings before Board or Court in appeal.

17. Certain settlements to be void.

18. Application under section 11 or 15 to be made only in respect of debtor whose debts are not less than Rs. 5,000.

19. Withdrawal applications.

20. Consolidations of applications.

21. Service of notice on debtors and creditor to submit statements of debts.

22. Debts in respect of which no application for adjustment or settlement is made to be void.

23. Duties of debtors and creditors.

24. Preliminary issues.

25. Transfer of pending suits, appeals, applications and proceedings to the Board.

26. Taking of accounts.

27. Examination of creditor and debtor.

28. Mode of taking accounts.

29. In certain cases rent may be charged in lieu of profits.

30. Notice to Jagir Administrator, Co-operative Societies, Registrar, Local Authorities and others.

31. Board's duty to determine particulars, value, etc. of property.

32. Fraudulent alienations of encumbrances void.

33. Value of property of debtor to be determined by Board in prescribed manner.

34. Paying capacity.

35. Debts payable by debtors to be scaled down.

36. Award.

37. Procedure for further scaling down of debts.

38. No recovery of amount in excess of debts scaled down.

39. Debts not to be scaled down in case of collusion.

40. Ex parte proceedings if any party does not appear.
41. Reopening of award and resettlement of debts.
42. Award to be registered; how to be executed.
43. Postponement of payment of instalment.
44. No alienation by debtor before discharge of debts valid.
45. Board may order sale of debtor's property in liquidation of his debt.
46. Pleader, etc., excluded from appearance.
47. Appeals.
48. Grounds of appeal.
49. Court fees.
50. Notice how served.
51. Provision of Civil Procedure Code to apply to Proceedings.

CHAPTER VI.

Insolvency Proceedings.

52. Board to declare debtor insolvent in certain circumstances.
53. Procedure in insolvency proceedings.
54. Distribution of assets of insolvent.
55. Bar to application in insolvency in other courts.
56. Appeals barred.

CHAPTER V.

Miscellaneous.

57. Period of proceedings before Board under this Act to be excluded.
58. Alienation of property before repayment of loan prohibited
59. Power of Government to authorise any person to advance loans to debtors.
60. Rules.
61. Operation of Act I of 1349 F., excluded from debts to which the present Act applies.

* THE HYDERABAD JAGIRDARS DEBT SETTLEMENT ACT. 1952.

No. XII OF 1952.

An Act to make provision for the settlement of the debts of Jagirdars.

WHEREAS it is expedient to make provision for the settlement of the debts of the Jagirdars; Preamble.

It is hereby enacted as follows:—

CHAPTER I.

Preliminary.

1. (1) This Act may be called the Hydcrabad Jagirdars Debts Settlement Act, 1952. Short title, extent and commencement.

(2) It extends to the whole of the Hyderabad State.

(3) It shall come into force on the date of its publication in the Jarida.

2. In this Act, unless there is anything repugnant in this subject or context— Definitions.

(*a*) "award" means an award made under the provisions of this Act ;

(*b*) "Board" means a Board constitued. under section 4 for the settlement of debts;

(*c*) "Collector" means the cheif officer in charge of the revenue administration of a district and includes any officer appointed as Collector under this Act;

(*d*) "Co-operative Society" means a Society registered under the provisions of the Hyderabad Co-operative Credit Societies Act, II of 1323 Fasli;

(*e*) "debt" means any liability in cash or kind, whether secured or unsecured, due from a Jagirdar, whether payabale under a decree or order of any Civil Court or otherwise and "debtor" shall be construed accordingly;

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(*f*) "Jagirdar" includes a Guzarayab and a Hissedar as defined in clauses (*c*) and (*e*) respectively of section 2 of the Hyderabad (Abolition of Jagirs) Regulation, 1358 F ;

(*g*) "local authority" means a Municipal Committee, a District Board or other authortiy legally entitled to or entrusted by Government with control or management of a municipal or local fund;

(*h*) "prescribed" means prescribed by rules;

(*i*) "rule" means rule made under this Act;

(*j*) "scheduled bank" means a bank included in the Second Schedule to the Reserve Bank of India Act, 1934;

(*k*) words and expressions used in this Act but not defined, have the meanings assigned to them in the Code of Civil procedure, 1908 (V of 1908), or the Land Revenue Act (Hyderabad Act VIII of 1317F.), as the case may be.

Savings.

3. Save as otherwise expressly provided, nothing in this Act shall affect the debts and liabilities of a debtor falling under the following heads named:—

(*i*) any revenue or tax payable to Government or any other sum due to it by way of loan or otherwise,

(*ii*) any tax payable to a Local authority or any other sum due to it by way of loan or otherwise,

(*iii*) any sum due to a co-operative society,

(*iv*) any sum due under a decree or order for maintenance passed by a competent Court, and

(*v*) any sum due to a scheduled bank.

CHAPTER II.

Constitution And Powers Of Board.

Constitution of the Board.

4. (1) The Government may, by notification in the Jarida from time to time establish one or more Boards for the settlement of debts or any class of debts and the notification shall specify the extent of the Jurisdiction of the Board or Boards so established.

(2) The Board shall consist of a Chairman and two other members.

(3) The Chairman and other members of the Board shall be appointed by Government and the Chairman shall posses such judicial qualifications as may be prescribed.

(4) The quorum of the Board shall be two except in respect of the final decision of the Board at which all the members shall be present.

(5) Where the Chairman and other members of the Board are not unanimous in their decision, the opinion of the majority shall prevail. If the decision of each of them on any point is different, the opinion of the Chairman on that point shall prevail.

(6) The Government shall by order direct which of the two members of the Board shall, in the absence of the Chairman, act as Chairman.

(7) No member of a Board who has directly or indirectly by himself or by his partner or near relation any share or interest in any transaction which is the subject-matter of any proceedings before the Board or any Jagirdar or any creditor of a Jagirdar or a professional money-lender shall act as a member of the Board in respect of such proceedings:

Provided that the proceedings of a Board shall not be called in question on the ground that a member has acted in contravention of this sub-section unless by reason of such contravention there has been a failure of justice.

Removal of Board or member.

5. (1) Notwithstanding anything contained in section (4), the Government may, after such enquiry as it thinks fit, at any time by notification in the Jarida—

(*a*) dissolve any Board and establish in its place a fresh Board; or

(*b*) remove all or any of the members of the Board and appoint in their place new members.

(2) The dissolution of a Board or the occurrence of any vacancy on the Board through death, resignation or removal of its members under clause (*b*) of sub-section

(1) shall not save to the extent, if any, directed by Government, in any way affect the validity of any proceeding pending before the Board and the said proceedings shall be continued before the said Board or before any other Board established in place of the said Board, as the case may be, as if there has been no dissolution of the board or the occurrence of any such vacancy.

(3) Save as otherwise provided in this Act, the proceedings pending before any Board which has been dissolved under the sub-section (1) and in place of which no other Board has been established shall be deemed to be civil proceedings for the purposes of the Indian Limitation Act, 1908, and the period during which such proceedings were pending before the Board shall be excluded in computing their period of limitation in regard to any suit or application which may be instituted in any civil court to enforce any claim which was the subject-matter of the proceedings pending before the Board so dissolved.

Power of Board to decide all questions arising on settlement of debts.

6. (1) Subject to the provisions of this Act, the Board shall have full power to decide all questions, whether of title or priority or of any nature whatsoever, and whether involving matters of law or fact, which may arise in any case within the cognizance of the Board or which the Board may deem it expedient or necessary to decide for the purpose of doing complete justice or making a complete settlement of debts in any such case.

(2) Subject to the provisions of this Act and notwithstanding anything contained in any other law for the time being in force, every such decision shall be final and binding for all purposes on all parties and all other persons claiming through or under such persons who are parties to the proceedings in which such decision is given.

Procedure before Board.

7. (1) Subject to the provisions of this Act and any rules made thereunder, the Board shall have the same powers as are vested in civil courts under the Code of Civil Procedure, 1908, when trying a suit and in particular in respect of the following matters:—

(*a*) joining any necessary or proper parties;

(*b*) summoning and enforcing the attendance of any persons and examining him on oath;

(*c*) compelling the production of documents;

(*d*) issuing commissions for the examination of witnesses ; and

(*e*) proof of facts by affidavits.

(2) Subject to the provisions of this Act and any rules made thereunder, the Board may direct any of its members to inspect any site or to examine any witnesses. On the inspection of such site by a member and the examination by him of witnesses, a report shall be made to the Board which shall be evidence in the case.

Proceedings deemed to be Judicial proceedings.

8. All proceedings under this Act before the Board shall be deemed to be judicial proceedings for the purposes of sections 193 and 228 of the Indian Penal Code.

Control over Board.

9. (1) A Board shall in all proceedings under this Act be subject to the control of the High Court.

(2) The High Court or any person authorised by the High Court in this behalf may inspect or cause to be inspected any property, books or documents in possession of or under the control of the Board and require the Board to furnish such statements, accounts, reports, copies of documents or such other information relating to the proceedings and duties of the Board and may pass such orders thereon as the High Court or the person authorised, as the case may be, thinks it.

Power of Board to extend time.

10. Where any period is fixed or granted by the Board for the doing of any act prescribed or allowed by this Act, the Board may, in its discretion, from time to time, extend such period, even though the period originally fixed or granted may have expired.

CHAPTER III.

Procedure for Settlement of Debts.

Application for Settlement of debts.

11. (1) Any Jagirdar ordinarily residing in any part of the State of Hyderabad or his creditor may make an application to a Board of competent Jurisdiction on or before such date as the Government may notify in the Jarida for settlements of debts due by the Jagirdar.

(2) Every application made under sub-section (1) shall be in writing in the prescribed form and shall be signed, verified and presented in the prescribed manner.

(3) Notwithstanding anything contained in section 3 an application made under this section shall contain also the amounts and particulars of all debts specified in that section due by the debtor.

Every Creditor and debtor to file a true and correct statement before Board.

12. (1) Notwithstanding the fact that no application has been filed under section 11—

(*a*) every creditor, on being required to do so by notice in writing by any of his debtors, shall, within one month from the date of the receipt of such notice, file before the Board concerned a true and correct statement of all his claims against such debtor, and shall at the same time send a copy thereof to such debtor, and

(*b*) every debtor, on being required to do so by notice in writing by any of his creditors, shall, within one month from the date of the receipt of such notice, file before the Board a true and correct statement—

(*i*) of all the debts owed by such debtor ; and

(*ii*) of his income in the year preceding the date of the notice.

the debtor shall at the same time send a copy of such statement to such creditor :

Provided that the Board may, for sufficient cause, extend, from time to time, the period within which the creditors or the debtor, as the case may be, may file such statement.

(2) Every debtor or creditor giving a notice under sub-section (1) shall at the same time send a copy thereof to the Board concerned.

(3) In awarding the costs of any proceedings in respect of any application made under section 11 the Board may, on being satisfied that the statement required to be filed under sub-section (1) was, without sufficient cause, not filed within the time specified therein or within the extended period under the proviso to that sub-section or incorrectly filed, direct the party in default to bear the whole or any portion of the costs of such proceeding.

Application by debtor jointly and severally liable.

13. (1) If the payment of a debt due by a debtor is guaranteed by a surety or if a debtor is otherwise jointly and severally liable for any debt along with any other person and if the surety or such other person is not a debtor, the debtor may make an application under section 11 for relief in respect of such debt and the Board may after consideration of the facts and circumstances of the case proceed with the settlement of debts under this Act in so far as such applicant is concerned.

(2) Whenever the debts due by a debtor which are guaranteed by a surety are settled under sub-section (1), the surety shall be discharged from liability in respect of of the debts or portion of the debts of such debtor which are extinguished under sub-section (1) of section 22, sub-section (5) of section 30, section 38 or clause (2) of section 39 ; and the surety shall not be entitled to proceed against the debtor in respect of such debts or portion.

Assignees from non debtor not entitled to benefit of this Act.

14. No application shall lie under section 11 for settlement of any debts due from a debtor to whom such debt has been transferred or assigned after the 1st January, 1941 by any person who is not himself a debtor.

Application for recording settlement.

15. (1) If any debtor and any or all of his creditors arrive at a settlement in respect of any debt due by the debtor to the creditor, the debtor or any of the creditors may, within thirty days from the date of such settlement, make an application to the Board for recording such settlement.

(2) Every such application shall be in the prescribed form, and shall be signed and verified in the prescribed manner.

(3) On receipt of such application the Board shall, after giving notice to the creditor or the debtor, as the case may be, and after making such enquiry as it thinks fit, if it is satisfied that the settlement arrived at is *bona fide* and voluntary and is not made with intent to defeat or delay any of the creditors of the debtor, and is in the interest of the debtor, and that the debtor is a person who fulfils the conditions referred to in clauses (*a*) and (*b*) of sub-section (1) of section 24, record such settlement and certify the same. Every such settlement so recorded and certified shall be binding upon the parties thereto and shall not, save as otherwise hereinafter provided be reopened.

(4) After the Board has recorded and certified a settlement under sub-section (3), the Board shall call upon the debtor to make a declaration whether there are any other debts due by the debtor which are not included in the settlement. If the debtor makes a declaration that there are no such debts, the Board shall make an award in terms of such settlement.

(5) If the Board is satisfied, after recording such settlement, that there are other debts due from the debtor which are not included in the settlement the Board shall treat the application made under sub-section (1) as an application for settlement of debts under section 11.

Settlement during pendency of proceedings before Board or Court in appeal.

16. Notwithstanding anything contained in the preceding sections, if during the pendency of proceedings before the Board or the Court in appeal, as the case may be, a settlement is arrived at between a debtor and all his creditors and if such Board or Court is satisfied that the settlemet has been made by the debtor voluntarily and is for his benefit, such Board or Court may make an award in terms of such settlement.

Certain settlements to be void.

17. Every settlement by consent of a debt due from a debtor to any creditor, which is not certified by the Board under section 15, or in terms of which no award has been made under section 16, shall be void and shall not be recognised by any Court or Tribunal for any purpose whatsoever.

Application under section 11 or 15 to be made only in respect of debtor whose debts are not less than Rs. 5,000.

18. No application under section 11 or 15 shall be entertained by the Board on behalf of or in respect of any debtor, unless the total amount of debts due from him on the date of the application is not less than Rs. 5,000.

Withdrawal of applications.

19. An application for settlement of debts under section 11 or an application for recording a settlement under section 15 shall not be withdrawn without the leave of the Board.

Consolidation of applications.

20. Where two or more applications for settlement of debts under section 11 are presented by or against the same debtor, all such applications shall be consolidated. Where such separate applications are presented against joint debtors all such applications shall be heard together.

Service of notice on debtors and creditors to submit statement of debts.

21. On receipt of an application for settlement of debts, the Board shall—

(*a*) give notice to the debtor (unless the debtor is himself an applicant) and to every creditor (other than the creditor who is himself an applicant) whose name and address are given in the application, and

(*b*) publish a general notice, requiring the debtor and all creditors to submit a statement in the prescribed form within one month from the date of the service of the notice or the publication of the general notice, whichever is later:

Provided that if the Board is satisfied that the debtor or any other creditor is for good and sufficient cause unable to comply with the notice within the time specified therein it may extend the period for the submission of the statement.

Debts in respect of which no application for adjustment or settlement is made to be void.

22. (1) Every debt due from a debtor in respect of which no application has been made under section 11 within the period specified in the said section 11 or in respect of which no application for recording a settlement is made under section 15 within the period specified in the said section 15 or in respect of which an application made to the Board is withdrawn under section 19 and no fresh application is made under 11 and every debt due from such debtor in respect of which a statement is not submitted to the Board by the creditor in compliance with the provisions of section 21 shall be extinguished.

(2) Nothing contained in sub-section (1) shall apply –

(*a*) to any debt in respect of which the debtor and creditor agree in writing before the Board that the said sub-section shall not apply thereto, or

(*b*) to any debt due from any person who has by his declaration, act or omission intentionally caused or permitted his creditor to believe that he is not a debtor for the pur-posesof this Act or that no application under section 11 can be entertianed in respect of any debt owed by such person to such reditor by reason of the provisions of section 18.

Duties of debtors and creditors.

23. (1) Every debtor by or against whom an application is made under section 11 or who is a party to an application made under section 15 shall produce all books of accounts and shall give such inventories of his property and such lists of his creditor and debtors and of the debts due from and to him, submit to such examination in respect ot his property or his creditors, attend at such time before the Board and generally do all such things as may be required by the Board or as may be prescribed.

(2) It shall be the duty of every creditor to produce such books of accounts, to submit to such examination and to supply such information in respect of the debt due to him by the debtor and the securities held by him, as may be required by the Board or as may be prescribed.

Preliminary issues.

24. (1) On the date fixed for the hearing of an application made under section 11, the Board shall decide the following points as preliminary issues:—

(*a*) whether the person for the settlement of whose debts the application has been made is a debtor;

(*b*) whether the total amount of debts due from such person on the date of the application is or exceeds Rs. 5,000/—

(2) If the Board finds that snch person is not a debtor or that the total amount of debts due from such person on the date of the application is less than Rs. 5,000/– the Board shall dismiss the application forthwith.

Transfer of pending suits, appeals, applications and proceedings to the Board.

25. (1) All suits, appeals, applications for execution and proceedings other than revisional in respect of any debt pending in any civil or revenue court shall, if they involve the questions whether the person from whom such debt is due is a debtor and whether the total amount of debts due from him on the date of the application is less than Rs. 5,000 be transferred to the Board.

(2) When an application for adjustment of debts made to a Board under section 11 or a statement submitted to a Board under section 21 includes a debt in respect of which a suit, appeal application for execution or proceeding other than revisional is pending before a civil or revenue court, the Board shall give notice thereof to such

other court. On receipt of such notice, such other court shall transfer the suit, appeal, application or proceeding, as the case may be, to the Board.

(3) When any suit, appeal, application or proceeding is transfrred to the Board under sub-section (1) or sub-section (2), the Board shall proceed as if an application under section 11 had been made to it.

(4) If the Board, to which any suit, appeal, application or proceeding is transferred under sub-section (1) or sub-section (2, decides the preliminary issue mentioned in clause (*a*) of sub-section (1) of section 24 in the negative or the mentioned in clause (*b*) of the said sub-section (1) in the negative, it shall retransfer the suit, appeal, application or proceeding to the court from which it had been transferred to itself after the disposal and subject to the result of the appeal where an appeal is filed, and after the expiry of the period prescribed for an appeal where no appeal is filed.

(5) When any suit, appeal, application or proceeding is retransferred to the court under sub-section (4), the said court shall proceed with the same.

Taking of acconnts.

26. If the Board finds that the person making an application under section 11 or the person against whom an application is made under the said section 11 to be a person—

(*a*) who is a debtor, and

(*b*) the total amount of debts due from whom on the date of the application is not less than Rs. 5,000 the Board shall proceed to take accounts in the manner hereinafter provided.

Examination of creditor and debtor.

27. In an application for the settlement of debts if the amount of the creditor's claim is disputed the Board shall, when taking accounts, examine both the creditor and the debtor as witnesses, unless for reasons to be recorded the Board deems it unnecessary so to do.

Mode of taking accounts.

28. Notwithstanding any agreement between the parties or the persons (if any) through whom they claim, as to allowing compound interest or setting of the profits of mortgaged property without an account in lieu of interest, or otherwise determining the manner of taking the account, and notwithstanding any statement or settle-

ment of account, or any contract purporting to close previous dealings and create a new obligation, the board shall enquire into the history and merits of the case and take account between the parties from the commencement of the transactions subsisting between the parties and the persons (if any) through whom they claim, out of which the claim has arisen and determine the amount due to each of the creditors at the date of the application made under section 11, according to the following rules, namely :—

(1) (*a*) Separate accounts of principal and interest shall be taken.

(*b*) In the account of principal there shall be debited to the debtor only such amount whether paid in cash or kind as may from time to time have been actually received by him or on his account from the creditor.

(*c*) In the accounts of principal and interest there shall also be debited the amount, if any, respectively due for Principal (including costs) and interest under any decree or order passed by a competent court in respect of any debt :

Provided that if such decree or order does not specify the amount of principal and interest separately or does not contain any material for determining the same two-third and one-third of the amount awarded by such decree or order shall for purposes of this clause, be deemed to be the amount awarded on account of principal (including costs) and interest, respectively.

(2) In the case of transactions which commenced before the 1st January 1934 the Board shall take the account up to the date of the institution of the application and in the account of interest there shall be debited to the debtor, simple interest on the balance of principal for the time being ontstanding at the rate agreed upon between the parties or at the rate allowed under any decree passed between the parties, or at a rate not exceeding 12 per cent. per annum whichever is the lowest. The amount found due in respect of principal as well as in respect of interest shall, each separately, be reduced to such extent not exceeding 40 per cent. as to the Board, having regard to all the circumstances of the case,

appears fair and reasonable, notwithstanding that a decree or order of a civil court was passed in respect of any such amount or portion thereof. The amounts so reduced shall be taken to represent the amounts due in respect of principal and interest on the date of the institution of the application.

(3) In the case of transactions which commenced on or after the 1st January 1934 but before the 1st January 1943 in the account of interest there shall be debited to the debtor, simple interest on the balance of principal for the time being outstanding at the rate agreed upon between the parties, or at the rate allowed under any decree passed between the parties, or at a rate not exceeding 9 per cent. per annum, whichever is the lowest. The amount found due on the date of the institution of the application in respect of principal as well as interest shall each separately be reduced to such extent not exceeding 30 per cent. as to the Board, having regard to all the circumstances of the case appears fair and reasonable, notwithstanding that a decree or order of a civil court was passed in respect of any such amount or portion thereof. The amounts so reduced shall be taken to represent the amounts due in respect of principal and interest on the date of the institution of the application.

(4) In the case of transactions which commenced on or after the 1st January 1943, in the account of interest there shall be debited to the debtor simple interest on the balance of principal for the time being outstanding at the rate agreed upon between the parties, or at the rate allowed under any decree passed between the parties, or at a rate not exceeding 6 per cent. per annum whichever is the lowest.

(5) All money paid by or on account of the debtor to the creditor or on his account and all profits services or other advantages of every description received by the creditor in the course of the transactions (estimated, if necessary, at such money value as the Board in its discretion may determine) shall be credited first in the account of interest, and when any payment is more than sufficient to discharge the balance of interest due at the rate specified in sub-sections (2), (3) or (4) as the case may be the residue of such payment shall be credited to the debtor in the account of principal.

(6) The accounts of principal and interest shall be made up to the date of the institution of the application, and the aggregate of the balance, if any, appearing due on both such accounts against the debtor on that date shall be deemed to be the amount due at that date, except when the balance appearing due on the interest account exceeds that appearing on the principal account, in which case double the latter balance shall be deemed to be the amount then due:

Provided that where transactions between the parties have commenced more than 30 years before the 30th January 1943, any settlement of accounts which has been last arrived at between the parties before the said period of 30 years and which is in writing and bears the signature of the debtor or the person through whom the liability is derived shall be accepted as binding between the parties and no enquiry into the history and merits of the case shall be made prior to the date of such settlement.

In certain cases rent may be charged in lieu of profits.

29. Where any mortgaged property is in the possession of the mortgagee or his tenants other than the mortgagor and the Board is unable to determine what profits have actually been received, it may fix a fair rent for such property and charge to the mortgagee such rent as profits for the purpose of section 28.

Notice to Jagir Administrator, Co-operative Societies, Registerar, Local authorities and others.

30. (1) On receipt of an application for settlement of debts, the Board shall give notice to the Jagir Administrator requiring him to state to the Board within such time as may be fixed by it the amount of the debt due by the debtor to Government.

(2) The Board shall also give similar notice to any local authority, Co-operative society or scheduled bank to which any debt may be due by the debtor and also to any person who is entitled to maintenance from the debtor, under a decree or order passed by a competent court. In the case of any debt due to a co-operative society, the Board shall also give notice to the Registrar of Co-operative Societies or to such officer as the Registrar may nominate in this behalf.

(3) On receipt of such notice, the Jagir Administrator, the local authority, the co-operative society or the scheduled bank, or the person entitled to maintenance,

as the case may be, shall, within such time as may, from time to time, be fixed by the Board, submit a statement to the Board showing the total amount of the debt due by the debtor as also any recurring liability against such debtor in respect of the liability for maintenance under the decree or order.

(4) The Jagir Administrator, the Co-operative Society and the scheduled bank shall also furnish a statement to the Board showing the amount of remission which the Government, the Co-operative society or the scheduled bank, as the case may be, is willing to give in respect of the debt.

(5) The portion of any debt remitted under sub-section (4), and unless the Board otherwise directs any debt other than a debt due to Government or portion thereof in respect of which no statement is submitted under sub-section (3), shall be extinguished.

Board's duty to determine particulars, value, etc. of property.

31. After taking accounts under section 28 the Board shall in the manner hereinafter provided determine—

(1) the particulars of the property belonging to the debtor,

(2) the value of the said property,

(3) the particulars of any encumbrances on the said property, and

(4) the paying capacity of the debtor.

Fraudulent alienations or encumbrances void.

32. (1) If in the course of the hearing of an application under section 11, the Board finds that the debtor has made an alienation of property or created any encumbrances thereon with intent to defeat or delay any of his creditors, the Board shall, by notice, summon the debtor and the person in whose favour the alienation or encumbrance is made or created to appear before it on a day to be specified in the notice.

(2) On the day specified in the notice or such other day to which the hearing may be adjourned the Board shall hear the parties and if it is satisfied that the alienation was made or the encumbrance was created with intent to defeat or delay any of the creditors of the debtors, the Board shall declare the alienation or encumbrance to be void.

(3) Nothing in this section shall impair the rights of an alienee or the holder of an encumbrance in good faith and for valuable consideration.

Value of property of debtor to be determined by Board in prescribed manner.

33. (1) Subject to the provisions of sub-sections (2), (3) and (4), the value of the property and other assets of a debtor for the purposes of ascertaining the paying capacity of the bebtor under section 31 shall be determined by the Board in the prescribed manner.

(2) The property or assets which are exempt from attachment in execution of a decree of a civil court under the Code of Civil Procedure, 1908, shall not be taken into account.

(3) The amount of the debts mentioned in section 3 shall be deducted.

(4) The market value of the lands, which under any law for the time being in force, are not transferable or alienable except with the previous sanction of the Collector or the Government, shall be calculated in such manner as may be prescribed.

Paying capacity.

34. The paying capacity of the debtor shall, for the purposes of this Act, be deemed to be sixty per cent. of the value of all the property of the debtor:

Provided that when any portion of such property yields income but the market value of such portion cannot be determined, the value of such portion shall be the amount of the income capitalized at six per cent. per annum.

Debts payable by debtors to be scaled down.

35. (1) Notwithstanding any law custom, contract, award or decree of a Court to the contrary the amounts found due under section 28 from a debtor shall be further scaled down in the manner hereinafter provided.

(2) If all the debts found due by a debtor after taking accounts under section 28 are unsecured, such debt shall be further scaled down *pro rata* to the paying capacity of the debtor.

(3) If all the debts found due by a debtor after taking accounts under section 28 are unsecured, such the total amount of such debts is more than sixty per cent. of the value of the property belonging to the debtor, such debts shall be further scaled down *pro rata* to the paying capacity of the debtor.

(4) If the debts found due by a debtor after taking accounts under section 28 are both secured and unsecured, and if the total amount of the secured debts is more than sixty per cent. of the value of the property on which such debts are secured, the secured debts shall be further scaled down *pro rata* to sixty per cent. of the value of the property on which debts are secured and the unsecured debts shall be further scaled down *pro rata* to sixty per cent. of the value of the other property belonging to the debtor over which no debts are secured.

Award.

36. (1) After determining the amount or debts scaled down in the manner provided section 35 the Board shall, save as otherwise provided in section 37 make an award.

(2) The award shall be in the prescribed form and shall be drawn up subject to the following provisions:

(*i*) the amount of the secured debts scaled down shall be charged on the properties on which they may have been secured;

(*ii*) subject to clause (*i*) the amount of unsecured debts shall be charged on all the properties of the debtor;

(*iii*) in fixing the priority in which debts shall be paid the following order shall be followed:—

(*a*) debts due to Government which are charged on the immovable property belonging to the debtor or which are recoverable as the current year's land revenue,

(*b*) debts due to local authorities, which are charged on the immovable property belonging to the debtor or which are recoverable as the current year's dues,

(*c*) secured debts in order of priority,

(*d*) debts due to Government, local authorities and other bodies including co-operative societies, and recoverable as arrears of land revenue,

(*e*) other debts due to co-operative societies,

(*f*) unsecured debts:

Provided that in the case of unsecured debts they shall be paid *pro rata*;

(*iv*) the total annual instalments shall not exceed twenty:

Provided that in fixing the amount of instalments in which the debts shall be paid the Board shall ascertain the net annual income of the debtor and the annual instalments payable by the debtor shall not exceed his net annual income.

Explanation:— For the purposes of this clause, the net annual income of the debtor shall mean the balance of his annual income after deducting (*i*) such sum as may be considered necessary for the payment of the liability, if any, imposed on the debtor under a decree or order for maintenance passed by a competent court, (*ii*) such sum as may be considered necessary for the maintenance of the debtor and his dependents, and (*iii*) the sum required by the debtor to pay the assessment and taxes in respect of the current year to Government and to local authorites;

(*v*) the Board may pass an order for the delivery of possession of any property notwithstanding any law or contract to the contrary;

(*vi*) the rate of interest shall not exceed 6 per cent. per annum or such less rate as may be notified in this behalf by the Government or the rate agreed upon between the parties when the debt was originally incurred or the rate allowed by the decree in respect of such debt whichever is the lowest.

Procedure for further scaling down of debts.

37. Where the amount of debts of the debtor as scaled down under section 35 exceeds half the value of the debtor's immovable property as determined by the Board, the Board shall intimate to the creditors the amount of the said debts of the debtor and the said value of the debtor's immovable property and call upon them to state in writing within a specified period not exceeding one month whether they agree to the further scaling down of the said debts so as to reduce them to a sum not exceeding half the said value of the immovable property of the debtor. If all the creditors agree to the further scaling down of the debts, the Board shall make an award directing the debtor to pay the amount of such debts so agreed upon within a period of one month from the date of the award.

No recovery of amount in excess of debts scaled down.

38. The amount of debts scaled down under section 35 or further scaled down under section 37 shall for the purposes of this Act be the amount due by the debtor in respect of the said debts and the portion of the debts in excess of this amount shall be extinguished.

Debts not to be scaled down in case of collusion.

39. If the Board making an award under section 36 is at any stage of the proceeding satisfied—

(1) that the debtor had in collusion with any creditor furnished in such proceeding incorrect information in respect of the debt due by him to such creditor with a view to defeat the lawful claims of any other creditor, the Board may refuse to scale down any of the debts of such debtor in the manner provided in section 35 and may make an award for the full amount of the debts due from such debtor;

(2) that any claim by a creditor in such proceeding had been put forward in collusion between the debtor and such creditor with a view to defeat the lawful claims of any other creditor, the Board shall order that the debt due by the debtor to such creditor shall be extinguished and such debt shall not be recoverable.

Ex parte proceedings if any party does not appear.

40. (1) Notwithstanding that the person for the settlement of whose debts an application has been made under section 11 or any of his creditors does not appear on the date fixed for the hearing of the application or on any date to which it may be adjourned, the Board shall proceed *ex parte* to hear the application, beside the preliminary issues and, if necessary, make the award, on the evidence available.

(2) When an application made under section 11 is heard and disposed of *ex parte* under sub-section (1) the decision on the preliminary issues or the award shall not except for sufficient reasons, be reopened merely on the ground that any of the parties thereto did not appear at the hearing.

Reopening of award and re-settlement of debts.

41. If, after an award is made under section 36, the Board finds on an application made to it by any party or otherwise, that the debtor has other property which was not disclosed to the Board when the award was made, or that any property included in the award did not belong to the debtor,

the Board may, notwithstanding anything contained in this Act, reopen the award and resettle the debts in accordance with the provisions of this Act :

Provided that where the Board is satisfied that the non-disclosure of such property was in consequence of any fraud on the part of the debtor, the Board revising the award shall not give the debtor the benefit of section 35.

Award to be registered ; how to be executed.

42. (1) Every award made under this Act shall, on payment of the court-fee payable under section 49, be registered under the Indian Registration Act, 1908, after the expiry of the period provided for an appeal, if an appeal is allowed but no appeal is filed and after the disposal of the appeal if an appeal is filed.

(2) The court-fee on the award shall be paid by the party ordered by the Board to bear the costs :

Provided that any creditor who is not ordered to bear the costs may pay such court-fee. Such creditor shall be entitled to recover the amount of court-fee paid by him from the debtor with the first instalment payable to him under the award :

Provided further that no court-fee shall be payable by a co-operative society.

(3) The award so registered shall be executed as follows :—

(*i*) If the debtor makes default in the payment of any instalment due under the award to any creditor such creditor may apply in the prescribed form to the Board for execution of the award.

(*ii*) If the Board on receipt of such application is satisfied that the debtor has made default in the payment of the instalment the Board shall transfer the award for execution to the Collector and thereupon the Collector shall recover the amount of the instalment from the debtor as arrears of land revenue :

Provided that nothing in this sub-section shall affect the right of Government, a local authority or a co-operative society to have recourse to any mode of recovery allowable by any law for the time being in force.

Postponement of payment of instalment.

43. The Government may at any time on the ground of serious hardship to the debtor, if such hardship arose after the date of an award made under section 15, 16, 36 or 37 postpone by any period not exceeding one year, the payment of any instalment or instalments due under the award.

No alienation by debtor before discharge of debts valid.

44. Notwithstanding any law or contract but subject to the provisions of section 45 no alienation of any property belonging to a debtor who is a party to any proceedings or award under this Act, made by him before all his debt are discharged shall be valid, except with the previous sanction of the Government.

Board may order sale of debtor's property in liquidation of his debt.

45. If the Board or the Court hearing an appeal against the award is at any time satisfied that it is in the interest of a debtor that any part of his property should be sold in liquidation of his debt or part thereof such Board or Court may permit the debtor to sell such part of the property for such purpose within a specified period. If the debtor fails to sell it, such Board or Court may order an officer of the Board or Court to sell the same. The property ordered to be sold under this section shall be sold by such officer in the manner prescribed:

Provided that the part of the property ordered to be sold under this section shall not exceed the part liable to be sold under sub-section (2) of section 52.

Pleaders, etc., excluded from appearance.

46. Except in proceedings under section 32 no pleader shall be entitled to appear on behalf of any party in any proceeding before the Board or the Court in appeal under this Act:

Provided that if the Board after examining the parties to any proceeding before it or the Court in appeal is of opinion that any of the parties is not sufficiently competent to represent his case and that in the interest of justice it is necessary to allow such party the assistance of any pleader, it may allow the parties to be represented at their own cost by a pleader:

Provided further that pleader's fees shall not be allowed as part of the costs for the appearance of a pleader in any proceedings under this Act.

Appeals.

47. Notwithstanding anything contained in any other law and save as otherwise provided in section 55,

(1) an appeal shall lie—

(i) from every order passed under sub-section (3) of section 15 ;

(*ii*) from every order passed under section 24 ;

(*iii*) from every order passed under section 32 ;

(*iv*) from every order passed under sub-section (2) of section 40 ;

(*v*) from every award made under this Act other than an award made in terms of a settlement under sub-section (4) of section 15 or under section 16 or section 37 or an award before the making of which neither the debtor nor any of the creditors produced evidence to enable the Board to determine the amount of debt due from the debtor ;

(2) an appeal from the Board shall lie to the High Court and such appeal shall be filed within 60 days of the decision or award of the Board computed in the manner prescribed in the Indian Limitation Act, 1908, so far as applicable ;

(3) no second appeal shall lie against any decision, order or award of the Board under this Act.

Grounds of appeal.

48. No decision or award of the Board shall be modified or set aside in appeal, except on any of the following grounds :—

(*a*) such decision or award was improperly procured,

(*b*) corruption or misconduct of the Board or any member thereof, in the conduct of the proceedings relating to such decision or award,

(*c*) any illegality or irregularity in the proceedings relating to such decision or award, which has occasioned failure of justice,

(*d*) any error of law or erroneous appreciation of evidence which has occasioned failure of justice,

Court-fees.

49. (1) Notwithstanding anyting contained in the Hyderabad Court Fees Act, court-fees payable in respect of proceedings under this Act, shall be at the following rates:—

(*i*) on an application under sub-section (1) of section 11 or section 15 or on an award under sub-section (4) of section 15 or section 16—Re. 1;

(*ii*) on an award other than an award specified in clause (*iii*)—Re. 1 for every hundred rupees, or part thereof, of the amount of the award, subject to a maximum of Rs. 50;

(*iii*) on an appeal against a decision of the Board under sub-section (3) of section 15 or sub-section (2) of section 24 Rs. 2;

(*iv*) on an appeal other than an appeal specified in clause (*iii*)—Re. 1 for every hundred rupees, or part thereof, of the amount of the award, subject to a maximum of Rs. 50.

(2) Notwithstanding anything contained in any law, the court-fees payable in the respect of proceedings under this Act shall be a first charge on the property of the party ordered to pay the costs and shall be recoverable in such manner as may be prescribed.

Notice how served.

50. Any notice required to be served under this Act shall be served in the manner provided in the Code of Civil Procedure, 1908; and when rules are made in that behalf in such manner as may be prescribed.

Provisions of Civil Procedure Code to apply to proceedings.

51. Save as otherwise expressly provided in this Act, the provisions of the Code of Civil Procedure, 1903, shall apply to all proceedings under this Chapter.

CHAPTER IV.

Insolvency Proceedings.

Board to declare debtor insolvent in certain circumstances.

52. (1) If an any stage of the proceedings under Chapter III the Board finds that income of the debtor and his movable property are not sufficient to allow his debts to be liquidated by annual instalments not exceeding twenty in number, the Board shall make an order adjudicating the debtor an insolvent.

(2) After the debtor has been adjudicated an insolvent, the Board shall direct that such portion of the property of the debtor, liable to attachment and sale under section 60 of the Code of Civil Procedure, 1908, excluding such portion thereof as the Government shall from time to time notify in the Jarida as minimum necessary for the maintenance of the debtor and his dependents, as may be required to liquidate all the debts of the debtors shall immediately be sold free of all incumbrances in liquidation of all debts outstanding against such debtor.

Procedure in insolvency proceedings.

53. The order of adjudication made under section 52 shall have the force of an order made by a competent Court in the exercise of its powers under the Hyderabad Insolvency Act.

Distribution of assets of insolvent.

54. The proceeds realised by the sale of the property of the insolvent under section 52 shall be distributed in the order of priority specified in clause (*iii*) of subsection (2) of section 36.

Bar to application in insolvency in other Courts.

55. No application or proceeding in regard to the insolvency of a debtor shall lie in or shall be dealt with otherwise than by the Board or where an appeal lies by the Court of appeal.

Appeals barred.

56. No appeal shall lie from any order passed under this Chapter except on the ground that the insolvent has failed to disclose all the material facts relating to his assets and liabilities.

CHAPTER V.

MISCELLANEOUS.

Period of proceedings before Board under this Act to be excluded.

57. In computing the period of limitation for the institution of any suit or proceeding in respect of any debt due from any person who is held not to be a debtor by the Board or the Court in appeal the period during which the proceedings were pending before the Board or Court in appeal in respect of such debt shall be excluded.

Alienation of property before repayment of loan prohibited.

58. (1) Save as otherwise provided in this Act no person who is a party to any proceedings or award under this Act and who is indebted to any person authorised to advance loans under section 59 shall mortgage, hypothecate or sell his property without the previous sanction of such person until such loan has been repaid in full.

(2) Any person who mortgages, hypothecates or sells any property in contravention of sub-section (1) shall, on conviction, be punishable with imprisonment for a term which may extend to six months or with fine which may extend to Rs. 500 or with both.

(3) No Criminal Court shall take cognizance of any offence under this section except on the complaint in writing of the Board or Court before which the proceedings were held or which made the award.

Power of Government to authorise any person to advance loans to debtors.

59. (1) The Government may by notification in the Jarida authorise in any local area any person to advance loans to debtors who are parties to any proceedings under this Act or in respect of whose debts a settlement has been made under this act.

(2) Such authority shall be granted on such conditions as may be prescribed.

Rules.

60. (1) The Government may by notification in the Jarida and subject to the condition of previous publication from time to time make rules for carrying into effect the purposes of this Act.,

(2) In particular and without prejudice to the generality of the foregoing provision, such rules may be made for all or any of the following purposes, namely:—

(*a*) the form of application under sub-section (2) of section 11 and the manner of signing, verification and presentation thereof;

(*b*) the form of application and the manner of signing and verification thereof under sub-section (2) and the manner of giving notice under sub-section (3) of section 15;

(*c*) the manner of giving notice and publication of general notice and the form of statement to be submitted under section 21;

(*d*) the inventories of property, lists of creditors and of debtors and of debts due to and from a debtor, the examination in respect of property of creditors, the time at which the debtors shall attend before the Board and do other things in relation to property under sub-section (1) of section 23, and the production of books of account, the examination to be submitted to, and the information to

be supplied by a creditor in respect of the debt due to him by the debtor under sub-section (2) of section 23;

(*e*) the manner of determining the value of property and other assets under sub-section (1) and the manner of calculating the market value of the lands under sub-section (4) of section 33;

(*f*) the form of award under sub-section (2) of section 36 and under section 37;

(*g*) the form of application under clause (*i*) of sub-section (3) of section 42;

(*h*) the manner in which property may be sold under section 45;

(*i*) the manner of recovery of court-fees under sub-section (2) of section 49;

(*j*) the manner of service of notice under section 50;

(*k*) the conditions of on which authority to grant loan shall be granted under sub-section (2) of section 59;

(*l*) any other matter which may be prescribed under this Act.

Operation of Act of 1349 F., excluded from debts to which the present Act applies.

61. No debts or liabilities to which this Act applies shall be dealt with or form the subject matter of any proceedings under the Debt Conciliation Act, 1349 Fasli.